

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES,	§	
	§	
Plaintiff/Respondent,	§	
v.	§	Cr. No. C-04-657 (4)
	§	C.A. No. C-07-66
	§	
FERMIN GONZALEZ-RAMIREZ,	§	
	§	
Defendant/Movant.	§	

**MEMORANDUM OPINION AND ORDER DENYING WITHOUT
PREJUDICE MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE**

Fermin Gonzalez-Ramirez (“Defendant”) was sentenced by this Court on April 21, 2005. (D.E. 110.)¹ Final judgment was entered on May 3, 2005. (D.E. 114.) Defendant timely appealed to the United States Court of Appeals for the Fifth Circuit. (D.E. 116.) His appeal remains pending before that Court. (See generally docket sheet in United States v. Fermin Gonzalez-Ramirez, No. 05-40938 (5th Cir.)).

On December 4, 2006, the Clerk received from Defendant a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. (D.E. 142.) This Court cannot address his § 2255 motion while his direct criminal appeal is pending. As the Fifth Circuit noted in Welsh v. United States: “A motion to vacate under 28 U.S.C. § 2255 will not be entertained during the pendency of a direct appeal, in as much as the disposition of the

¹ Docket references are to the criminal case.

appeal may render the motion moot.” 404 F.2d 333, 333 (5th Cir. 1968), abrogated on other grounds, United States v. Ortega, 859 F.2d 327, 334 (5th Cir. 1988). Similarly, the outcome of Defendant’s appeal may moot some or all of the grounds raised in his motion.

For the foregoing reasons, Defendant’s § 2255 motion (D.E. 142) is DENIED WITHOUT PREJUDICE.

It is so ORDERED this 12th day of February, 2007.


HAYDEN HEAD
CHIEF JUDGE